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U.S. DEPT. OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

GENEVA CONSTRUCTION COMPANY, INC., a
Corporation

THE UNITED STATES

OF DISTRICT OF COLUMBIA

PETITIONER'S NAME AND ADDRESS

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 108

CENTAUR CONSTRUCTION COMPANY, INC., A
CORPORATION,

Petitioner,

vs.

THE UNITED STATES,

Respondent.

**PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN
OPPOSITION**

The facts are stated in the petition.

Argument

In their Brief counsel for respondent have not, we believe, cited any authority to show that the decision of the court below is not in conflict with *United States v. Bush & Co.*, 310 U. S. 371; and *United States v. Chemical Foundation, Inc.*, 272 U. S. 1.

On the contrary, the argument of counsel for respondent shows the importance of a decision by this Court on the facts and law involved in this case for the guidance of the lower courts, the Government departments and the public

in the many cases in which contracts were modified under the provisions of the War Powers Act and the Executive Order of the President pursuant thereto, in carrying out the policy of Congress.

On page 7 of their brief, counsel for respondent state that the department's authority is limited to the amendment or modification of "contracts," the legal term which describes an executory agreement as distinguished from a completed arrangement.

The War Powers Act, under which the President issued his Executive Order, authorized amendments or modifications of contracts "heretofore" made and "without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deems such action would facilitate the prosecution of the war."

The Executive Order of the President authorized the Navy Department to modify or amend or settle claims under contracts "heretofore or hereafter made" and "irrespective of the time * * * and irrespective of the rights which may have accrued," and expressly authorized "releasing accrued obligations of any sort, including liquidated damages."

Since the Navy Department had accepted a release, as provided for under article 16(d) of the contract modified, by which release petitioner reserved the right to "make claim for" the sums allowed by the Navy Department, a question is raised as to whether this was a completed contract, and whether full and complete settlement had been made.

The case of *United States v. Holpuch Co.*, 328 U. S. 234, cited by counsel for respondent, is not applicable here as that involved the question of exhaustion of administrative remedies, and the War Powers Act was not involved. However, in the recent case of *Oklahoma v. United States Civil*

Service Commission, decided on February 10, 1947, this Court said that "Congress may create legally enforceable rights where none before existed."

As to the number of cases growing out of amendments or modifications of contracts under the War Powers Act, counsel for petitioner understand that the Navy Department amended about six other contracts under similar conditions as was done in the pending case, and the Navy Department is now demanding repayment from the contractors who received payment.¹

The authority to amend and modify contracts under the War Powers Act was delegated by the President to over twenty Government departments and agencies, and petitioner believes that many contracts were amended thereunder.²

It is believed that the question is of great importance to the Departments and Government agencies concerned

¹ One such letter from the Navy Department to the North-Eastern Construction Company, Winston-Salem, N. C., is set out in the Appendix (1).

Another letter from the Navy Department to W. C. Spratt, Fredericksburg, Va., is set out in Appendix (2).

The names of the others and the amounts involved is not known.

² Title 50, War Appendix, Sec. 611 U. S. C. A., pp. 244-248 shows the Executive Orders issued by the President as follows: The War Department, the Navy Department, and the United States Maritime Commission by Executive Order No. 9001; the Treasury Department, the Department of Agriculture, the Panama Canal, the Federal Works Agency, the Government Printing Office, and the National Advisory Committee for Aeronautics by Executive Order No. 9023; the Interior Department by Executive Order No. 9055; the Tennessee Valley Authority by Executive Order No. 9056; the Federal Reserve Bank, and the Reconstruction Finance Corporation by Executive Order No. 9112; the Coordinator of Inter-American Affairs in the Office of Emergency Management, the Civil Aeronautics Administration of the Department of Commerce, and the National Housing Agency by Executive Order No. 9116; the Office of Scientific Research and Development by Executive Order No. 9219; Federal Prison Industries, Inc., by Executive Order No. 9221; the Board of Economic Warfare by Executive Order No. 9233; the Director of Strategic Services by Executive Order No. 9241; the Immigration and Naturalization Service by Executive Order No. 9253; and the Commerce Department by Executive Order No. 9264.

as well as the lower courts who will have to pass upon cases involving similar facts where amendments were made under the same or similar conditions.

Respectfully submitted,

JOSEPHUS C. TRIMBLE,
Counsel for Petitioner.

Of Counsel:

HARRY S. HALL,
JOHN F. HAYES.

APPENDIX (1)

U. S. NAVY CENTRAL DISBURSING OFFICE

1608 Arlington Annex

Washington 25, D. C.

In Reply Refer to File No. L6-2(NOy-4097) (FDS-3a)
X-18.

29 July 1947.

North-Eastern Construction Co., P. O. Box 838, Winston-
Salem, N. C.

GENTLEMEN :

The General Accounting Office has taken exception to payment made to you in May 1942 in the amount of \$4,620.00 on D. O. Voucher 304166 for the reason that refund of liquidated damages is not authorized since the work was completed and final payment was made prior to the date of First War Powers Act, 1941 and Executive Order 9001 of 27 December 1941.

Therefore, it is requested that your check for \$4,620.00 payable to the Treasurer of the United States, securely attached to a copy of this letter be forwarded as soon as possible in the enclosed envelope in order that the suspension of payment may be removed.

Very truly yours,

P. C. CORNING,
Captain, SC, USN,
Officer in Charge.
C. A. KIRSCHBAUM,
By direction.

APPENDIX (2)

NAVY DEPARTMENT

Bureau of Supplies and Accounts

Washington 25, D. C.

28 May 1947.

NOy-3161(FDS-3a)X-16
Disb Div.

W. C. Spratt, Fredericksburg, Virginia.

SIR:

The General Accounting Office has taken exception to payment made to you in April 1942 on Bureau voucher 12 DO Voucher 259998 covering refund of liquidated damages in amount of \$3,150.00 for the reason that the contractor's appeal to the Secretary of the Navy pursuant to Art. 15 of Contract NOy-3161 for the remission of the liquidated damages withheld in accordance with the terms of the contract does not provide sufficient basis for releasing a right vested in the Government under a contract actually completed long prior to the passage of the First War Powers Act.

Therefore, it is requested that your check for \$3,150.00 payable to the Treasurer of the United States securely attached to a copy of this letter, be forwarded as soon as possible in the enclosed envelope in order that the suspension of payment may be removed.

Respectfully,

C. A. KIRSCHBAUM,
By direction of Chief of Bureau.

(2399)